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ZAIDI MOHD ZAIN & ANOR v. PP

HIGH COURT MALAYA, GEORGETOWN
MOHD RADZI ABDUL HAMID JC
[CRIMINAL REVISION NO: PA-43-2-03-2021]
6 MAY 2021

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CRIMINAL PROCEDURE: *Inquest – Revision – Death in police custody – Discovery – Discovery of documents relating to custody and death – Whether allowable – Whether s. 51A of Criminal Procedure Code inapplicable to Inquests – Retnarasa Annarasa v. PP – Whether no longer good law – Whether Coroner to consider s. 51 – Whether to allow delivery – Criminal Procedure Code, ss. 51, 51A, 325, 334, 337 – Courts of Judicature Act 1964, s. 31*

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The applicants' son in this case ('deceased') had died in police custody. Following an inquest held to determine the cause of death, the applicants, being 'interested persons' within the meaning of Arahan Amalan No. 2/2014, applied to the Coroner under s. 51A of the Criminal Procedure Code ('CPC') for the disclosure and delivery of documents relating to the deceased's custody and death, including the relevant police reports, the post mortem report *et cetera*. The application was however turned down by the Coroner on the ground that s. 51A, which adverts to pre-trial delivery of documents in criminal trials, did not apply to inquests, and also that no disclosure could lawfully be made prior to the commencement of the inquest. Dissatisfied, the applicants moved the High Court under s. 31 of the Courts of Judicature Act 1964 and s. 325 of the CPC to review the Coroner's decision and determine its correctness, legality or propriety. It was principally argued on the authority of *Retnarasa Annarasa v. PP* ('*Retnarasa*') that s. 51A read with s. 51 of the CPC allowed discovery of documents in both criminal trials and inquest proceedings. The issues that arose were: (i) whether s. 51A of the CPC applied to an inquest; (ii) whether *Retnarasa* is still good law; and (iii) whether the Coroner ought to have read s. 51 with Arahan Amalan No. 2/2014 and granted the application in question.

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Held (allowing application; ordering delivery of documents):

(1) Section 51A of the CPC which provides for automatic disclosure of documents to assist an accused in the preparation of his defence only applies to a criminal trial. It does not apply to an inquest. (paras 15 & 16)

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(2) As was ruled by the Federal Court in *Dato' Seri Anwar Ibrahim v. PP*, s. 51A could not be read together with or as an extension of s. 51 and the two sections must be read separately. It followed that *Retnarasa*, for pronouncing that s. 51A may be read with s. 51 to empower the Coroner to order disclosure of documents in an inquest, is no longer good law. (para 18)

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(3) A Coroner must, unless compelled to decide otherwise, favour disclosure of documents to the 'interested persons'. More so when such disclosure, as shown here, is not for the purpose of embarrassing any party but to bring forth to light information that could enable the interested persons to assist the court through the questioning of witnesses and determining all matters required by s. 337 of the CPC. (para 24)

(4) The legal source of the Coroner's power to order disclosure of documents is s. 51 of the CPC which may be read together with Arahan Amalan No. 2/2014. It is clear that by the words of ss. 334 and 337 CPC, an inquest is an inquiry and therefore comes within the scope of s. 51. The Coroner fell into error in failing to consider the applicability of s. 51 of the CPC and Arahan Amalan No. 2/2014 as the source of the Coroner's power to order disclosure of documents to interested persons. (paras 20 & 33)

(5) An application for documents under s. 51 of the CPC can be made at any stage of an inquiry, investigation or trial. It can be made before the commencement of the inquest or during the course of the inquest. Only that, in an application before the commencement of an inquest, the type or nature of documents sought must be specifically identified and named. The prime consideration, however, should always be that the documents applied for were basic and necessary documents, and relate to the purpose and subject matter of the inquest. (paras 26, 27, 29 & 33)

(6) In the context of the present application, the following documents ought to be delivered to the applicants, namely: (i) all the relevant police reports; (ii) the lock-up diary; (iii) the sketch plan of the lock up; (iv) the photographs of the lock-up where the deceased was found dead; (v) the post mortem photographs; (vi) the medical reports if any; and (vii) the chemist report if any. (paras 31 & 33)

Case(s) referred to:

Dato' Seri Anwar Ibrahim v. PP [2010] 4 CLJ 265 FC ***(refd)***
Kulwant v. PP [1986] 2 MLJ 10 ***(refd)***
Liaw Kwai Wah & Anor v. PP [1987] 1 CLJ 35; [1987] CLJ (Rep) 163 SC ***(refd)***
PP v. Dato' Seri Anwar Ibrahim & Another Appeal [2010] 4 CLJ 331 CA ***(refd)***
PP v. Kulasingam [1974] 1 LNS 118 HC ***(refd)***
PP v. Mohd Fazil Awaludin [2009] 2 CLJ 862 HC ***(refd)***
PP v. Raymond Chia Kim Chwee & Anor And Another Case [1985] 2 CLJ 457; [1985] CLJ (Rep) 260 FC ***(refd)***
PP v. Shanmugam & Ors [2002] 1 LNS 160 HC ***(refd)***
Re Teoh Beng Hock [2010] 2 CLJ 192 HC ***(refd)***
Retnarasa Annarasa v. PP [2008] 4 CLJ 90 HC ***(not foll)***
Teoh Meng Kee v. PP [2014] 7 CLJ 1034 CA ***(refd)***

Legislation referred to:
Courts of Judicature Act 1964, s. 31
Criminal Procedure Code, ss. 51A, 325, 334, 337

Other source(s) referred to:
Srimurgan Alagan, *The Criminal Procedure Code, A Commentary,* p 6

For the applicants - Saibullah MV Nathan & V Sanjay Nathan; M/s Saibullah MV Nathan & Co
For the respondent - Khairul Anuar Abdul Halim, Yazid Mustaqim Roslan, Noor Azura Zulkiflee & Farah Aimy Zainul Anuar; DPPs

Reported by Wan Sharif Ahmad

JUDGMENT

Mohd Radzi Abdul Hamid JC:

Matter Before This Court

[1] This was an application for a revision of the decision of the Coroner made on 9 March 2021 ("application"). This application was made *via* a letter dated 10 March 2021 issued by the applicant's counsel, M/s Saibullah MV Nathan & Co ("counsel").

Background

[2] One Mohd Fadzrin bin Zaidi ("deceased") had passed away on 22 November 2019 at approximately 3.20am whilst in police custody at the lock-up of the District Police Headquarters Seberang Perai Utara, Penang. The deceased was the son to both the applicants. Following a report of sudden death, the Sessions Court Judge acting in the capacity as Coroner ordered an inquest ("inquest") to be established pursuant to s. 334 of the Criminal Procedure Code ("CPC") and for the purpose as provided under s. 337 of the CPC.

[3] Section 334 of the CPC reads as follows:

> When any person dies while in the custody of the police or in a psychiatric hospital or prison, the officer who had the custody of that person or was in charge of that psychiatric hospital or prison, as the case may be, shall immediately give intimation of such death to the nearest Magistrate, and the Magistrate or some other Magistrate shall, in the case of a death in the custody of the police, and in other cases may, if he thinks expedient, hold an inquiry into the cause of death.

[4] Section 337 of the CPC provides as follows:

> A Magistrate holding an inquiry shall inquire when, where, how and after what manner the deceased came by his death and also whether any person is criminally concerned in the cause of the death.

Proceedings Leading To The Application

[5] Before the inquest proceedings commenced, counsel had on 4 January 2021 applied to the Coroner in the capacity as lawyers appointed to watch brief of the inquest proceedings on behalf of the applicants, for the disclosure and delivery of relevant documents that will enable the applicants as interested persons to effectively observe the inquest proceedings and assist the court whenever possible through examination of witnesses. By definition under Part B and C (p. 5), Lampiran A (Guidelines On Inquest) as annexed to the Arahan Amalan Bil. 2 Tahun 2014, Pengendalian Siasatan Kematian (Death Inquiry) Selaras Dengan Penubuhan Mahkamah Koroner ("Arahan"), the applicants are "interested person". The application was made premised on the provision of s. 51A of the CPC.

[6] That application was opposed by the Deputy Public Prosecutor acting as assisting officer on the grounds that s. 51A of the CPC did not apply to an inquest proceeding.

[7] After hearing the parties, the Coroner finally decided on 9 March 2021 that s. 51A of the CPC did not apply to an inquest proceeding and consequently denied the applicant's request for disclosure of documents. That denial lead to the application being made to this court.

[8] This application seeks to move this court to exercise its powers of revision to set aside the decision of the Coroner in denying the disclosure of documents and consequently order the disclosure of documents relevant to the inquest.

The Application

[9] The applicants raised the following arguments to justify the exercise of this court's power of revision to set aside of the Coroner's decision:

(i) that ss. 51 and 51A of the CPC read together with Part D at p. 5 of the Arahan favours the disclosure of documents to interested persons;

(ii) that the disclosure of documents is necessary to allow the interested persons to effectively observe the inquest proceedings and assist the Coroner through the examination of witnesses as allowed under Part B and C at p. 5 of the Arahan;

(iii) that the early disclosure of documents prior to the commencement of the inquest hearing is necessary to provide sufficient time to the interested persons to study the documents in anticipation of participating in the inquest through the examination of witnesses; and

(iv) that there could not be any prejudice or embarrassment caused by disclosure of documents to the Coroner's Court, the assisting officers or witnesses as the purpose of an inquest is to determine the cause and circumstances of death as provided under s. 377 of the CPC and not to prove the guilt of any person.

[10] In opposing the application the respondent submitted, *inter alia*:

(i) that s. 51A of the CPC did not apply to an inquest as s. 51A of the CPC is a provision that only applies in the pre-trial delivery of documents to an accused in a criminal trial;

(ii) that s. 51A of the CPC cannot be read together with s. 51 of the same Act to provide the basis for the disclosure of documents in an inquest;

(iii) that an application for the disclosure of documents cannot be made prior to the commencement on an inquest since the assisting officer may not have yet decided on what documents would be tendered in the course of the inquest proceedings; and

(iv) that otherwise, any application for disclosure of documents before commencement of an inquest must refer to specific documents and cannot be made generally akin to a "fishing expedition" of documents.

Power Of Revision

[11] The power of revision by the High Court are found in s. 31 of the Courts of Judicature Act 1964 and s. 325 of the CPC:

Courts of Judicature Act 1964

31. Revision of criminal proceedings of subordinate courts

The High Court may exercise powers of revision in respect of criminal proceedings and matters in subordinate courts in accordance with any law for the time being in force relating to criminal procedure.

Criminal Procedure Code

325. Powers of Judge on revision

(1) A Judge may, in any case the record of the proceedings of which has been called for by himself or which otherwise comes to his knowledge, in his discretion, exercise any of the powers conferred by sections 311, 315, 316 and 317 of this Code.

(2) No order under this section shall be made to the prejudice of the accused unless he has had an opportunity of being heard, either personally or by advocate, in his own defence.

(3) Nothing in this section shall be deemed to authorise a Judge to convert a finding of acquittal into one of conviction.

[12] Abdul Hamid Omar CJ (Malaya) (as he then was) in the Supreme Court case of *Liaw Kwai Wah & Anor v. PP* [1987] 1 CLJ 35; [1987] CLJ (Rep) 163; [1987] 2 MLJ 69 described the duty of the High Court in exercising its revisionary powers as follows:

Duty of High Court

Basically, the duty lies with the High Court to see that the criminal law is properly administered by an inferior court.

The Judge's duty is to satisfy himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed and as to the regularity of any proceedings of such inferior court. Where, for instance, a convicted person has scrupulous objection to invoke the jurisdiction of a High Court, either on a question of legality of conviction or error of law concerning the conviction or sentence, the Judge ought to call for and examine the record with a view to exercising the revisionary power to correct a miscarriage of justice.

[13] In the oft-quoted decision in *PP v. Kulasingam* [1974] 1 LNS 118; [1974] 2 MLJ 26, Hashim Yeop A Sani J (as he then was) stated the following on the powers of a court in a revision:

The powers of the High Court in revision are amply provided under s. 325 of the Criminal Procedure Code subject only to sub-ss. (ii) and (iii) thereof. The object of revisionary powers of the High Court is to confer upon the High Court a kind of "paternal or supervisory jurisdiction" in order to correct or prevent a miscarriage of justice. In a revision the main question to be considered is whether substantial justice has been done or will be done and whether any order made by the lower Court should be interfered with in the interest of justice.

Deliberations By This Court

On The Issue Of Whether Section 51A Of The CPC Applies To An Inquest

[14] Section 51A of the CPC provides as follows:

(i) The prosecution shall before the commencement of the trial deliver to the accused the following documents:

(a) a copy of the information made under s. 107 relating to the commission of the offence to which the accused is charged, if any;

(b) a copy of any document which would be tendered as part of the evidence for the prosecution; and

(c) a written statement of facts favourable to the defence of the accused signed under the hand of the Public Prosecutor or any person conducting the prosecution.

(ii) Notwithstanding para. (c), the prosecution may not supply any fact favourable to the accused if its supply would be contrary to public interest.

(iii) A document shall not be inadmissible in evidence merely because of non-compliance with sub-s. (1).

(iv) The court may exclude any document delivered after the commencement of the trial if it is shown that such delivery was so done deliberately and in bad faith.

[15] After careful consideration of the provision of s. 51A of the CPC and the decisions of the High Court in *PP v. Mohd Fazil Awaludin* [2009] 2 CLJ 862; [2009] 7 MLJ 741, the Court of Appeal in *PP v. Dato' Seri Anwar Ibrahim & Another Appeal* [2010] 4 CLJ 331; [2010] 2 MLJ 353, the Federal Court in *Dato' Seri Anwar Ibrahim v. PP* [2010] 4 CLJ 265; [2010] 2 MLJ 312, on the purpose and interpretation of s. 51A it is clear that s. 51A only applies in a criminal trial where an accused is prosecuted for an offence. The Court of Appeal in *PP v. Dato' Seri Anwar Ibrahim & Another Appeal* (*supra*) stated thus:

> [41] Section 51A of the Code came into force on 6 March 2006. It provides for automatic discovery of certain documents by the accused before the commencement of the trial. Section 51A(1)(b) provides for the delivery to the accused of a copy of any document which would be tendered as part of the evidence for the prosecution. Section 51A(1)(c) requires the public prosecutor to deliver to the accused a written statement of facts favourable to the defence of the accused.
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> [42] We agree with the submission of the learned Solicitor General that the wording of s. 51A is very clear in that what the prosecution is required to supply are those documents/statements of fact expressly stipulated therein.

[16] Therefore, since an inquest is not a trial that involves the prosecution of an accused, s. 51A which provides for the automatic disclosure of documents to an accused for the benefit of him in preparing his defence cannot apply to an inquest. As stated by Mah Kweng Wai JCA in *Teoh Meng Kee v. PP* [2014] 7 CLJ 1034:

> [117] An inquiry of death is not like a criminal trial. There is no complainant, no prosecutor and there is no accused person on trial. It is only an inquiry by a Magistrate as to the cause of death and the Deputy Public Prosecutor is there not to prosecute anyone but only to assist the court with the examination of witnesses for the purpose of receiving the evidence. Hence the officer "conducting" the inquiry is known as an assisting officer and not as a prosecuting officer. Counsel present is there not to defend anyone but only to look after the interest of those who have appointed him. The procedure and rules of evidence which are suitable for the accusatorial process are unsuitable for an inquiry of death which essentially is an inquisitorial process. At the close of an inquiry there is no finding of guilt, conviction or punishment of anyone. The threshold for the standard of proof in an inquiry of death must thus be lower than that for a criminal trial.

[17] Premised on the above, this court holds that s. 51A of the CPC cannot be the statutory provision that gives the Coroner the power to exercise a discretion to order the disclosure of documents in an inquest and corollary to that an application for disclosure for documents cannot be made under that provision. To that extent, the Coroner's decision that s. 51A of the CPC does not apply to an inquest is correct.

[18] Following from the above, in this court's view the decision of the High Court in *Retnarasa Annarasa v. PP* [2008] 4 CLJ 90; [2008] 8 MLJ 608 referred to by learned counsel for the applicants cannot longer be taken as good authority for the proposition that s. 51A of the CPC can be read together with s. 51 of the same Act to give the Coroner the power to order the disclosure of documents in an inquest. Both the Court of Appeal and Federal Court in *PP v. Dato' Seri Anwar Ibrahim & Another Appeal (supra*) had clearly held that s. 51A cannot be read as an extension to s. 51 of the CPC and that they must be read separately. Abdull Hamid Embong FCJ speaking for the Federal Court held:

> [31] The learned judge relied on a High Court decision in *Retnarasa Annarasa v. PP* [2008] 4 CLJ 90 where it was opined that s. 51 should not be read in isolation but in tandem with s. 51A CPC. It was also held in that case that with the new s. 51A in place, previous cases decided on the issue of disclosure of information and documents would no longer be applicable.
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> [32] The Court of Appeal hearing this instant appeal rejected this approach as disclosed in these passages:
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> > It is obvious from the judgment of the learned Judge in the instant case that he was in agreement with the decision of the High Court in *Retnarasa* case. The learned Judge disregarded the decisions of the apex court on the interpretation of section 51 of the Code. In fact this was the main complaint by the Public Prosecutor.
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> > With due respect, we were unable to agree with the decision of the learned Judge. In our view the decision of the apex court in the *Raymond Chia*'s case and the *Husdi*'s case are relevant and applicable in respect of the application for documents not specifically mentioned in section 51A of the Code. In this connection we agree with the submission of the learned Solicitor General that the law on the application of section 51 had not changed notwithstanding the inclusion of the new section 51A of the Code.
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> > ...
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> [37] In our view the learned judge was also wrong to say that earlier cases decided on s. 51 are no longer applicable. Having considered both sections, we agree with the Court of Appeal that s. 51 and s. 51A are two separate and distinct provisions. Section 51A is a provision which imposes an obligation upon the prosecution to supply certain documents and materials. It has no connection to s. 51 which gives the court a discretion to allow for discovery in specific instances. Hence, s. 51A should not be used in interpreting s. 51. Section 51 should thus be interpreted as it stands and taken to mean according to its plain and ordinary meaning and not be differently read. Thus, s. 51 cannot now be modified with the aid of the so called philosophy underlying the new s. 51A, even if such a

A philosophy did exist. It is thus wrong for the learned judge to conclude that s. 51A, had changed the mode of prosecution in a criminal trial, and in the process ignoring past precedents on its interpretation.

On The Application Of Section 51 Of The CPC To An Inquest

B **[19]** Since this court holds that s. 51A does not apply to an inquest then what is the statutory provision that gives the power to the Coroner to make an order for disclosure of documents? Learned Deputy Public Prosecutor argues that the source of that power must come from the Arahan. This court cannot agree to that argument simply because the Arahan does not have the force of law. It is merely an administrative directive issued by the office of C the Chief Registrar of the Federal Court. A practice direction only aids the court in applying the provisions of the CPC (see at p. 6, *The Criminal Procedure Code, A Commentary* by Srimurgan Alagan and the decision of the High Court in *Re Teoh Beng Hock* [2010] 2 CLJ 192; [2010] 1 MLJ 715). In *Teoh Meng Kee* (*supr*a), Hamid Sultan Abu Backer JCA expressed the view:

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> [157] The learned Magistrate in the instant case had assumed the role of a coroner and proceeded to deliver an open verdict relying much on the erroneous Practice Direction No. 1 of 2007 relating to Guidelines on 'Inquest', which is inconsistent with the provisions of CPC. All relevant parties must be reminded when interpreting a statute, first consideration E must be to determine what the statute says and its effect. When the statute is clear in its application, common law principles cannot be imported. (See *PP v. Yuvaraj* [1968] 1 LNS 116; [1969] 2 MLJ 89; *Jayasena v. R* [1970] AC 618). The failure to follow the relevant provisions of the law has resulted in erroneous result which has caused the need to appoint a Royal Commission and has also attracted undue condemnation by the F public of our criminal justice system. This has also led to a miscarriage of justice to the family members of the deceased.

[20] Although the above view did not find approval in His Lordship's fellow panel member Mah Weng Kwai JCA where His Lordship opined that an "open verdict" is applied under common law, the point here is that the G Arahan cannot be taken as the legal source of the Coroner's power to order the disclosure of documents. The source must come from a statutory provision and in this court's view that provision must be s. 51 of the CPC. It is clear that by the words in ss. 334 and 337 of the CPC, an inquest is an inquiry and an inquiry comes within the scope of s. 51 of the CPC. Section H 51(1) states:

> (1) Whenever any Court or police officer making a police investigation considers that the production of any property or document is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before that Court or officer, such Court may issue a summons or such officer a written order to the person in I whose possession or power such property or document is believed to be requiring him to attend and produce it or to produce it at the time and place stated in the summons or order.

[21] Therefore, in an inquest any application for disclosure of documents must be made pursuant to s. 51 of the CPC. How that power shall be exercised by the Coroner must then be guided by the Arahan.

[22] Reverting to the decision of the Coroner in the present application, this court holds the view that whilst she was correct in deciding that s. 51A of the CPC did not apply to an inquest, she fell into error when she failed to consider the applicability of s. 51 of the CPC read together with the Arahan.

On How Should The Power And Discretion Be Exercised By The Coroner

[23] Part D at p. 6 of the Arahan clearly states that the discretion should in general be exercised in favour of disclosure. Thus, the exercise of the Coroner's discretion in not allowing disclosure would be an exception. That directive is consistent with the purpose of an inquest and the right of interested persons to question any witness. The Coroner must always remind him or herself that an inquest is not a criminal trial and therefore they are not bound by the straight-jacket rules of evidence as applied in criminal trials. Since the Coroner sits also as Magistrate's or Sessions Court Judges presiding over criminal trials, they should distinguish their role and function when they sit as a Coroner. Failure to do so would frustrate the very purpose of an inquest and the flexibility of procedures it possesses. In *PP v. Shanmugam & Ors* [2002] 1 LNS 160 Suriyadi Halim Omar J (as he then was) held:

> To arrive at a correct conclusion, it is essential that I resolve a specific preliminary issue first ie, whether a magistrate who conducts such an inquiry under discussion, is bound by the normal rule of evidence. I will begin by stating that in a gist, due to the various amendments to the Criminal Procedure Code (Amendment) Act, the Courts Act 1948, the Courts (Amendment) Act 1950 and finally the substantive FMS Criminal Procedure Code being amended by Act 324/76 making it applicable to the whole of Malaysia, and repealing all the other statutes governing inquests or death inquiries, the magistrate court now has assumed the powers and duties of a coroner court. It had always been **accepted** that a coroner's inquest was a court of law, though not a court of justice, as it was **essentially set up to investigate** and ascertain the cause of death. Apart from being shackled by a limited mandate, a coroner was also not bound to follow the usual procedure of law courts. With the abovementioned statutory amendments, the position of a magistrate now is no different to the archaic coroner when holding an inquiry of death, and thus similarly not bound by the usual procedure of courts of law. In *Re Loh Kah Kheng (deceased) (supra)* Mohamed Dzaiddin J (as His Lordship then was) when reviewing an inquiry had in crystal clear terms remarked:

> I am, therefore of the opinion that so long as the learned magistrate was satisfied that there was evidence, in **whatever form or manner elicited and whether admissible** or not, which could assist her in establishing the cause of death of the deceased, she was perfectly entitled to know and take cognizance of it.
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> (emphasis added)

[24] Therefore, referring back to nature and features of an inquest as described by Mah Kweng Wai JCA in *Teoh Meng Kee* (*supra*) quoted above, a Coroner must at all times unless otherwise compelled to decide otherwise, favour the disclosure of documents to the interested persons. This court agrees with learned counsel for the applicants that the disclosure of relevant documents is not for the purpose of embarrassing any party but is to bring forth to light information that could enable the interested persons to assist the court through the questioning of witnesses the determination of all the matters as required under s. 337 of the CPC.

On When Should An Application For Disclosure Should Be Made

[25] Learned Deputy Public Prosecutor submitted that an application for disclosure can only be made in the course of the inquest proceedings and not before. This is because the assisting officer may not yet have decided on which document to be tendered during the inquest. As stated earlier, learned counsel for the applicants argued that an application made before commencement of the proceedings must be allowed to enable sufficient opportunity to the interested persons to study the documents and formulate any questions that will be posed to witnesses.

[26] Referring to the Federal Court decision in *PP v. Raymond Chia Kim Chwee & Anor And Another Case* [1985] 2 CLJ 457; [1985] CLJ (Rep) 260; [1985] 2 MLJ 436, an application for documents under s. 51 of the CPC can be made at any stage of an inquiry, investigation or trial. Hashim Yeop A Sani FJ in delivering the decision of the court stated:

> Section 51 is a general provision to be invoked at any stage of an inquiry, investigation or trial or other proceeding under the Code. From the language it is plain that section enables the Court or police officer, as the case may be, if it or he considers that the production of any document or material is necessary or desirable to issue, a summons (in case of the Court) or a written order (in the case of the police officer) to the person in whose possession or power the material or document is believed to be requiring such person to attend and produce the material or document at the time and place as stated in the summons or written order.

[27] In the context of an inquest, it is this court's view that the application can be made at any stage of the inquiry. It can be made before the commencement of the inquest and it can be made during the course of the inquest. Therefore, a Coroner should not decline to hear an application and exercise the discretion to disclose documents when an application is made before commencement of the inquest proceedings.

What Type Of Documents Can The Interested Persons Apply For?

[28] As decided in *Raymond Chia* (*supra*), in the context of a criminal trial, an application for documents made by an accused before and in the course of a trial are evaluated differently. When the application is made before commencement of trial it is only for purpose of giving adequate particularity to the charge where the charge specifies documents. Where the application is made in the course of the trial the rule of relevancy must be strictly enforced (see also *Kulwant v. PP* [1986] 2 MLJ 10).

[29] In this court's view, contrary to the strict considerations to be applied by a court in a criminal trial, in an inquest those considerations should not come into play. Since there is no charge filed against an accused, the Coroner is not bound to confine his or her attention to any specific fact in considering an application for disclosure before commencement of an inquest. The prime consideration should be the purpose and subject matter of the inquest. The type of documents to be disclosed must therefore be those documents that are basic and necessary to enable the interested persons to have a full understanding of the facts and circumstances of the subject matter.

[30] Having said that, this court agrees, however, with the respondent that an application for disclosure of documents should not be made randomly and generally without specific reference to the subject matter of the inquest. Hence, the type of documents asked for must be identified with sufficient clarity. It is not up to the Coroner to make an order for disclosure of documents all and sundry. In this respect, this court disagrees with the submission of learned counsel for the applicants that the disclosure should be for all documents that the assisting officer decides to tender during the inquest akin to a delivery of documents under s. 51A of the CPC simply because that decision may change in the course of an inquest. Since s. 51 of the CPC does not operate like s. 51A of the CPC, there cannot be a strict obligation on the Coroner to disclose all documents in the possession of the assisting officer.

[31] In the context of the present application, in this court's view those basic and necessary documents would be copies of the following: (i) all relevant police reports; (ii) lock-up diary; (iii) sketch plan of the lock-up; (iv) photographs of the lock-up where the deceased was found dead; (iv) the post mortem report; (v) post mortem photographs; (vi) medical reports if any; and (vii) chemist reports if any.

[32] Apart from those documents, any further application for disclosure of documents can be made during the course of the inquest as and when additional documents are tendered. As stated earlier, at that stage the Coroner should exercise his or her discretion in favour of disclosure unless there exist legal reasons why such documents cannot be disclosed such as on grounds of privilege. In that situation the Coroner must give reasons for deciding against disclosure.

A **Decision**

[33] Therefore, in the exercise of the powers of revision of this court, this court decides and directs as follows:

(i) that the decision of the Coroner in finding that s. 51A of the CPC did
B not apply to an inquest was correct;

(ii) however, the Coroner fell into error in failing to consider the application of s. 51 of the CPC read together with the Arahan as the source of the Coroner's power to order disclosure of documents to interested persons;

C (iii) an application for disclosure of documents can be made before the commencement of an inquest;

(iv) consistent with the Arahan, any exercise of discretion in an application for a disclosure of documents must generally be in favour of disclosure. An exercise of discretion refusing disclosure will be an exception and
D reasons for that refusal must be clearly stated;

(v) in an application for disclosure of document before commencement of an inquest, the type or nature of documents sought for must be specifically identified or named; and

E (vi) in relation to this application the Coroner is hereby ordered to disclose to the applicants copies of the following documents before commencement of the inquest: (i) all relevant police reports; (ii) lock-up diary; (iii) sketch plan of the lock-up; (iv) photographs of the lock-up where the deceased was found dead; (v) the post mortem report; (vi) post mortem photographs; (vii) medical reports if any; and
F (viii) chemist reports if any.

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